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SERVICE DATE – SEPTEMBER 23, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 206X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN POLK AND  
STORY COUNTIES, IA

Decided: September 22, 2004

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 14.0-mile line of railroad, known as the Ankeny Subdivision, extending from milepost 10.7 near Ankeny to milepost 341.1 (Equation:  $23.20 = 339.60$ ) near Slater, in Polk and Story Counties, IA. Notice of the exemption was served and published in the Federal Register on August 5, 2003 (68 FR 46264). By decision and notice of interim trail use or abandonment (NITU) served on September 3, 2003, the proceeding was reopened and a 180-day period was authorized for the Story and Polk County Conservation Boards (Counties) and the Iowa Natural Heritage Foundation (INHF) to negotiate an interim trail use/rail banking agreement with UP for the right-of-way involved in this proceeding.<sup>1</sup> The negotiating period under the NITU was extended by decision served on March 15, 2004. The extension expired on September 2, 2004.

On September 14, 2004, INHF filed a motion on behalf of Counties to extend the negotiating period until March 2, 2005. INHF indicates that the parties have been negotiating but more time is needed to complete the negotiations. By letter filed on September 20, 2004, UP advises that it is willing to continue to negotiate with INHF and supports the request to extend the negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>2</sup> Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to March 2, 2005.

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<sup>1</sup> The decision and notice also made the exemption subject to a historic preservation condition.

<sup>2</sup> See Rail Abandonments–Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to March 2, 2005.
3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary